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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Revision of the Commission's)	CC Docket No. 94-102
Rules to Ensure Compatibility)	
with Enhanced 911 Emergency)	DA 98-1504
Calling Systems)	

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its comments in response to the request for emergency declaratory ruling filed by the State of California 911 Program Manager ("California 911 Manager") in the above-captioned proceeding.^{1/} The California 911 Manager has asked for an immediate ruling on three issues related to the implementation of wireless E-911: (1) whether wireless carriers must deploy Phase I E-911 service in California in the absence of statutory immunity for liability; (2) in the absence of such statutory protection, whether the State must reimburse wireless carriers for the cost of liability insurance; and (3) whether wireless carriers must use selective routing to direct calls to individual public safety answering points ("PSAPs").

AT&T agrees with the California 911 Manager that clarification from the Commission on the issues of limitations on liability and cost recovery would be beneficial to all the parties involved. The Commission should decline the California 911 Manager's invitation to address

^{1/} Request for Emergency Declaratory Ruling of the State of California 911 Program Manager, filed July 20, 1998 ("California 911 Request").

the issue of selective routing, however, consistent with the Commission's previous decisions to refrain from dictating the technical details of how wireless E-911 service should be implemented.

I. IT IS REASONABLE FOR CMRS CARRIERS TO REQUIRE LIABILITY PROTECTION BEFORE THEY DEPLOY E-911 SERVICE

The California 911 Manager has asked the Commission whether wireless carriers have an obligation to deploy Phase I wireless E-911 service in California despite the fact that state statutes do not provide immunity for liability for E-911 services provided.^{2/} In previous filings with the Commission, AT&T has explained the importance of granting CMRS carriers a minimum level of protection from liability and has asked for a federal rule shielding carriers from liability.^{3/} While the Commission has indicated that this issue was best left to the states, recent experience suggests that the lack of uniform limitations on liability is one of the most significant barriers to the implementation of wireless E-911 service. The California 911 manager herself states that the "issue of immunity from liability is now the only substantive obstacle preventing trials and commercial deployment of wireless E-911 service."^{4/} The fact that the Commission has been asked yet again to clarify its rules regarding liability protection emphasizes the importance of this issue to all concerned.

^{2/} California 911 Request at 1.

^{3/} See, e.g., Petition for Reconsideration of AT&T Wireless Services, Inc., filed Sept. 3, 1996; Additional Comments Regarding Wireless Enhanced 911 Services of AT&T Wireless Services, Inc., filed Oct. 17, 1997; Comments of AT&T Wireless Services, Inc. on the Petition for Reconsideration of the Cellular Telecommunications Industry Association, filed March 18, 1998. Such a rule could provide wireless carriers with the minimum level of protection that the industry needs in order to provide E-911 services to consumers and could remain in effect only until the states have resolved this issue.

^{4/} California 911 Request at 1.

AT&T continues to believe that the public interest will best be served if CMRS carriers are protected against liability in connection with the provision of 911 services. If carrier liability is not addressed at either the state or federal level before carriers are required to provide E-911 service, wireless carriers will be exposed unnecessarily to significant risk.^{5/} In light of the fresh experience described by the California 911 Manager, AT&T respectfully renews its request for the Commission to reconsider its decision not to limit wireless carriers' liability at least until states address this issue.

II. STATES MUST REIMBURSE WIRELESS CARRIERS FOR THE COST OF INSURANCE POLICIES COVERING E-911 SERVICE

If the Commission concludes that wireless carriers must provide Phase I E-911 service regardless of the level of immunity protection they receive from states, the cost of any additional insurance coverage required to provide Phase I E-911 service must be included in the state's mechanism for ensuring that wireless carriers are able to recover their costs. This would be the case even if California decided to provide indemnification against state-initiated lawsuits, because wireless carriers would still have to purchase insurance to protect themselves from end user claims. The Commission expressly requires that "a mechanism for the recovery of costs relating to the provision of [E-911] services be in place" before a covered carrier is obligated to

^{5/} Members of Congress apparently share these concerns. Representative Tauzin, Chairman of the House Telecommunications Subcommittee, recently introduced a bill that grants wireless carriers immunity from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that wireline carriers have under applicable law. H.R. 3844, 105th Cong., 2d Sess. § 9 (1998). On August 5, 1998, the House Commerce Committee unanimously reported this bill to the full House.

satisfy the Phase I and Phase II requirements.^{6/} The costs of obtaining insurance coverage are like any other costs a wireless carrier incurs in implementing Phase I and carriers must have a means of recovering those costs. Moreover, given that states have the power to shield carriers from liability, it makes sense that they should cover insurance costs if they decline to provide such protection.

III. THE COMMISSION SHOULD REFRAIN FROM ADDRESSING THE ISSUE OF WHETHER CARRIERS MUST USE SELECTIVE ROUTING

The California 911 Manager has asked the Commission what the reference to “appropriate PSAP” in the E-911 Report and Order means in the context of selective routing.^{7/} The California 911 Manager appears to be asking the Commission whether the use of the term “appropriate PSAP” means that carriers must use selective routing in order to direct calls to individual PSAPs upon request, despite a California law that requires all cellular carriers to route 911 calls to the California Highway Patrol Communications Center.^{8/} Selective routing is a method of routing all subscriber 911 calls to a designated switching point, typically owned and operated by a local exchange carrier, which then routes calls to the nearest appropriate PSAP. The Commission should decline the California 911 Manager’s apparent request to require selective routing, consistent with the Commission’s previous decisions to refrain from dictating the technical details of how wireless E-911 service should be implemented.

^{6/} Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 at ¶ 11 (1996) (“E-911 Report and Order”).

^{7/} California 911 Request at 1.

^{8/} Cal. Pub. Util. Code § 2892.

In the E-911 Report and Order, the Commission chose to adopt general performance criteria rather than extensive technical standards to guide the development of wireless 911 service, recognizing that an inflexible approach might discourage carriers from developing “creative technological approaches to E-911 deployment.”^{9/} The Commission has recognized that the specifics of wireless E-911 implementation will vary from jurisdiction to jurisdiction based upon individual characteristics and requirements of the PSAP, the incumbent local exchange provider, and the CMRS provider. It would be inappropriate for the Commission to require selective routing. Instead, the Commission should allow the appropriate state government entities and the affected wireless carriers to work together to resolve this issue.

^{9/} E-911 Report and Order at ¶ 76.

CONCLUSION

The Commission should respond to the California 911 Manager's questions as set forth in more detail above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on the 14th day of August 1998, I caused copies of the foregoing "Comments of AT & T Wireless Services, Inc." to be sent to the following by either first class mail, postage pre-paid, or by hand delivery (*) to the following:

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